



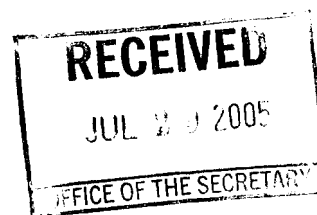
Securities Industry Association

1425 K Street, NW • Washington, DC 20005-3500 • (202) 216-2000 • Fax (202) 216-2119

info@sia.com • www.sia.com

July 28, 2005

Mr. Jonathan G. Katz
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549



Re: Petition for Rulemaking; Request for Extension of Certain Compliance Dates
for Rule 202(a)(11)-1 (S7-25-99)

Dear Mr. Katz:

Pursuant to Rule 192 of the Securities and Exchange Commission's Rules of Fair Practice, the Securities Industry Association¹ petitions the Commission to extend certain compliance dates for Rule 202(a)(11)-1 ("Rule") from October 24, 2005 until April 1, 2006.² As you know, broker-dealers currently provide a variety of services to customers, some of which are more extensive than others. The SIA requests this extension so that the industry may review these services and implement changes that will be necessary to comply with the financial planning and discretionary brokerage portions of the Rule (paragraphs (b)(2) and (b)(3)).³ Such additional time will allow firms to avoid inadvertent violations of the Rule and assure that compliance with the Rule does not entail costly, quite disruptive, and potentially counterproductive actions.

Paragraph (b)(2) of the Rule defines when a broker-dealer provides advice that is not solely incidental to the conduct of its business as a broker or dealer because it is "in connection with providing financial planning services."⁴ With respect to paragraph (b)(2) of the Rule, an

¹ The Securities Industry Association ("SIA"), established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. More information about the SIA is available on its home page: www.sia.com.

² 17 C.F.R. 275.202(a)(11)-1, Investment Advisers Act Release No. 2376 (Apr. 12, 2005), 70 F.R. 20424, 20441-42 (Apr. 19, 2005) ("Adopting Release").

³ With respect to the other paragraphs of Rule 202(a)(11)-1, the SIA does not believe an extension of the compliance date is necessary.

⁴ See Rule 202(a)(11)-1(b)(2).

extension is necessary to enable firms to make the required and considered judgments about those activities that are subject to the Investment Advisers Act, and will provide sufficient time for firms to develop and disseminate meaningful disclosures about brokerage and advisory relationships. As the Adopting Release acknowledged, the Rule potentially requires broker-dealers to develop new disclosures, redraft contractual language, and create a process for producing, delivering, and processing these new documents.⁵ Typically, it takes at least eight weeks for a broker-dealer to introduce and disseminate even minor changes in the language of a contract or disclosure statement. In addition, to the extent that computer models or programs will need to be adjusted to allow firms to comply with the Rule, it will take significant time for the changes to be specified, coded, tested, and produced. It is simply not possible for most firms to complete these activities by October 24, 2005.⁶

Paragraph (b)(3) of the Rule requires firms to treat accounts as investment advisory if the representative exercises investment discretion on more than a “temporary and limited” basis.⁷ Firms need additional time to comply with this portion of the Rule. Initially, broker-dealers need to review all accounts in which discretion is exercised in order to identify those not subject to the Rule’s requirements because discretion is merely “temporary or limited.”⁸ This review of individual accounts will be a labor-intensive and time-consuming process. Once the initial review is complete, broker-dealers must notify clients whose accounts are “discretionary” under the Rule. Those clients will need time to determine whether they want to maintain non-discretionary brokerage accounts or discretionary investment advisory accounts. Once a client determines the type of account relationship he wishes to have with a firm, broker-dealers will need time to convert certain accounts into advisory accounts by redrafting contracts, creating a process for delivering, negotiating, and obtaining client signatures on these documents, and recoding the accounts once the documents are returned to the firm. Finally, firms will need to ensure that investment advisory accounts and the representatives offering them comply with all of the requirements under the Advisers Act. An April 1, 2006 compliance date will allow firms more time to take the required actions.

Finally, we note that the Commission indicated that the rulemaking for Rule 202(a)(11)-1 raised several important issues. For this reason, the Commission directed the Staff to report to the

⁵ See, e.g., Adopting Release, 70 F.R. at 20445.

⁶ Even if the Commission granted an extension through the end of 2005, it would not be possible for most firms to complete these activities and be in compliance by such date. Because of year-end reporting requirements, firms generally “blackout” their systems to changes or new development from late-November through the end of the year.

⁷ See Rule 202(a)(11)-1(b)(3); see also Rule 202(a)(11)-1(d).

⁸ See Rule 202(a)(11)-1(d).

Mr. Jonathan G. Katz

July 28, 2005

Page 3

Commission within 90 days on ways to address these issues, including a study of investor protection concerns.⁹ The SIA believes that an extension would be consistent with the need for a study, and would provide the Commission time to determine the most prudent course in response thereto.

The SIA appreciates the Commission's consideration of our request and urges the Commission to adopt an extension as quickly as possible. If you have any questions, or would like to discuss these matters in greater detail, please contact the undersigned at 202-216-2000.

Sincerely,



Ira D. Hammerman

Senior Vice President and General Counsel

cc: The Honorable Cynthia A. Glassman, Acting Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Harvey J. Goldschmid, Commissioner
Giovanni Prezioso, General Counsel
Meyer Eisenberg, Acting Director, Division of Investment Management
Robert E. Plaze, Associate Director, Division of Investment Management
Nancy Morris, Attorney-Fellow, Division of Investment Management
Annette Nazareth, Director, Division of Market Regulation
Robert L.D. Colby, Deputy Director, Division of Market Regulation

⁹ See Adopting Release, 70 F.R. at 20442.